



State of Vermont
Vermont Department of Education
120 State Street
Montpelier, VT 05620-2501

To: Superintendents
Special Education Directors
Business Managers

From: Margaret C. Schelley
Special Education Finance Manager

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Subject: Change in Special Education Eligible Cost Rule for FY-2011

Field Memo No.: 10-08

We are currently working on preparing the Special Education Expenditure Report - Forms and Instructions for FY-2011 and the Technical Guide for Special Education Cost Documentation for FY-2011 for distribution later this month. However, as there are significant changes based on the rule changes that will affect school districts for FY-2011, we are sending out information about the changes now. There are three significant changes that will take effect with the new school year:

1. Co-teaching is an allowable special education service,
2. Staff documentation requirements are changing, and
3. 20% additional rule replaces core staff in allowing flexibility to provide EST and 504 services.

Co-Teaching Allowed

There was a change in the State Board Rule 2360.3.1 in the definition of special education services to include co-teaching as a special education service if certain criteria are met. For the portion of time that a special education teacher spends co-teaching to be considered a special education service the following conditions must be met:

- 1) Co-teaching must be performed by a licensed special education teacher jointly with a general education teacher in the general education classroom.
- 2) The IEPs of one or more students in the general education classroom must include co-teaching as a service for the subject area(s) being co-taught.
- 3) A plan for implementing co-teaching must be submitted and approved by Karin Edwards, Co-Director of Special Education at the Department of Education prior to implementation.

The limitations of the small group rule under 2366.2.1(a)(1) do not apply to co-teaching. In other words, the licensed special educator's time spent co-teaching is considered an allowable cost as long as the above conditions are met.

A memorandum is being sent out regarding the rule changes which will include the form which is to be submitted to Karin Edwards to receive Department approval.

Staff Documentation Requirements for School Year 2010-2011

The basic staff documentation requirements for school year 2010-2011 services are:

- **For professionals who work according to an established schedule:** a schedule which covers the employee's required work time for one school week covering five days. The weekly schedule needs to be collected two times during the year – one for each of the following periods:
 - 1) September – October and
 - 2) January – February.
- **For paraprofessionals and aides who work according to an established schedule:** a schedule which covers the employee's paid time for one school week covering 5 days. The weekly schedule needs to be collected at least two times during the year. In addition, a weekly schedule needs to be collected whenever there is a significant change in the employee's schedule. The weekly schedules required as a minimum are for each of the following periods:
 - 1) September – October and
 - 2) January – February.
- **For staff who only periodically provide special education services or whose work or caseload varies significantly over the year** (such as building-based special education administrators, psychologists, behavior specialists and home-school coordinators) are required to document their time differently. The supervisory union has the option for these staff members of requiring on-going time documentation or time studies prepared for three separate points during the school year. Each time study needs to cover one work week of five days.
- **For all staff completing staff documentation:** a caseload list for the full school year showing all the students served and each student's type of plan (IEP, 504, EST or other) that requires the service being provided.

20% Rules Replaces the Core Staff Rule

Effective for FY-2011, VT Board of Education Rule 2366.2.1 is changed to eliminate the “core staff” provision that has been in effect since FY-94. There were several reasons for making that change. First the “core staff” full-time equivalent (FTE) allocations by school districts were based on staff employed during school years 1990-1991 and 1991-1992 and no longer reflected the staffing currently needed. Also the “core staff” concept has always been hard for school districts to administer as it involves having to assign “core staff” FTEs to individual staff members each year. The department also required that the time studies be reviewed and the specific time blocks making up the “core staff time” be designated as such on the time studies.

This was necessary as “core staff time” could be used for providing IEP services as well as providing services required by EST and 504 plans and there was no way for anyone to know what blocks made up the “core staff” FTE without the blocks being marked as “core staff”.

The new rule allows as eligible cost for State K-12 special education funding formula for special education instructional staff:

(2) In addition to the time for carrying out special education responsibilities, up to 20% of a special education staff member’s time may be claimed, if that staff spends the additional time performing consultation to assist with the development of and providing instructional services required by:

- (i) A plan pursuant to Section 504 of the Rehabilitation Act; or
- (ii) A plan for children who require additional assistance in order to succeed in the general education environment as determined by the Educational Support Team;

There are a number of principles that apply to the additional 20% rule:

A. 20% Rule Limited to Special Education Instructional Staff

1. Professional staff must be licensed special educators.

The additional 20% only applies to professionals providing special education instructional services that are licensed as special education teacher (Special Educator, Consulting Teacher, Intensive Special Education Teacher, Teacher of the Blind and Visually Impaired, Teacher of the Deaf and Hard of Hearing) or as a licensed educational speech language pathologist. In the rest of this section, we will refer to these as licensed special educators.

2. Non-professionals must be providing services under the supervision of a licensed special educator excluding 1:1 paraprofessionals.

For the 20% rule to apply to aides, para-educators or paraprofessionals (by whatever name), the non-professional staff member must be supervised by a licensed special educator. This does not include paraprofessionals who work one on one with an individual student.

3. Staff member must be providing specialized instruction or speech services to K-12 students as required by their IEPs for a portion of their school year work schedule.

The additional 20% only applies to staff members who are providing K-12 special education instruction as required by students’ IEPs and is limited to school year services. Therefore licensed special educators who do not actually provide IEP instructional services are not subject to the additional 20% rule. One example would be an out-of-district coordinator whose duties are limited to case managing students placed outside of their home school district but do not actually provide any instruction. Another example would be a special educator whose responsibility was solely performing special education evaluations and providing training to other staff members. Neither of these special educators is actually providing specialized instruction. Also the additional 20% does not apply to extended school year time.

B. Services Allowable Under 20% Additional Rule

The allowable services that can be covered by the additional 20% rule are developing and managing EST and 504 plans for individual students and providing instructional services required by EST and 504 plans. This can include the time spent by special educators in reviewing the information on students found eligible for EST or 504 services to be able to provide consultation on services needed and attending meetings to develop the EST or 504 plans. It can also include the time spent by special educators and paraprofessionals in providing instructional services that are included in the EST or 504 plans and by special educators in managing those services. Evaluations for determining EST Plans and 504 Plans are not covered by this rule.

C. Calculation of Additional 20%

The additional 20% is calculated based on the portion of time that the individual staff person spends carrying out special education responsibilities compared to the time spent providing services relating to 504 and EST under the additional 20% rule. The first step is a review of the staff documentation that the employee prepares to determine what amount falls under each of the following three categories:

1. Time relating to allowable K-12 special education responsibilities which includes co-teaching time and time that is allowable under the small group rule,
2. Time allowable under 20% rule (see B. above) for K-12 students, and
3. Unallowable K-12 special education cost.

The Technical Guide for Special Education Staff Documentation will go into more detail about the process for reviewing staff documentation to categorize the time into the three categories.

Then the additional 20% is calculated to determine the total portion of the employee's time that can be claimed for special education funding formula reimbursement under SBE Rule 2366.2.1. The calculation to determine what portion of the potentially allowable EST/504 time falls within the 20% rule is to multiply by .2 the time spent providing special education services (1. above). If the result is greater than or equal to the actual amount of time spent providing allowable EST and 504 services, then all of that time is allowable. If the result is of the multiplication is less than the actual amount of time spent providing allowable EST and 504 services, then only the additional 20% is allowed. See examples below.

Example 1

The first example is a full-time special educator who spends her time all on K-12 students with her responsibilities split between special education and allowable EST and 504 responsibilities. Her schedule showed 30 hours performing special education allowable services and 4 hours performing allowable EST/504 services.

Total Time Worked On Weekly Schedule	34 Hours
1. Hours worked – Special Education K-12 Allowable	30 Hours
2. Hours worked – EST/504 Allowable	4 Hours
3. Hours worked – Unallowable K-12	0 Hours
Maximum 20% Additional Time (Calculated as the amount of Sped Allowable in 1. above multiplied by .2)	6 Hours

EST/504 Allowed (Actual hours in 2. above up to the maximum calculated on line above)	4 Hours
Total Hours Allowed for K-12 Formula Funding	34 Hours
% of Time Allowed for K-12 Formula Funding	100%

As the 20% for this staff person is calculated as 6 hours for allowable EST/504 services and she only spent 4 hours actually performing allowable EST/504 services, the 4 hours spent performing EST/504 services are allowed. Since all 34 hours of her time is allowed, 100% of the special educator's salary and benefits are allowable K-12 formula cost.

Example 2

In the second case, a paraprofessional spent 20 hours performing allowable special education responsibilities, 6 hours providing instruction in accordance with EST/504 plans and 8 hours performing non-special education duties.

Total Time Worked On Weekly Schedule	34 Hours
1. Hours worked – Special Education K-12 Allowable	20 Hours
2. Hours worked – EST/504 Allowable	6 Hours
3. Hours worked – Unallowable K-12	8 Hours
Maximum 20% Additional Time (Calculated as the amount of Sped Allowable in 1. above multiplied by .2)	4 Hours
EST/504 Allowed (Actual hours in 2. above up to the maximum calculated on line above)	4 Hours
Total Hours Allowed for K-12 Formula Funding	24 Hours
% of Time Allowed for K-12 Formula Funding	70.6 %

The additional 20% is calculated as 4 hours so the amount that can be claimed for this paraprofessional is 4 hours for EST/504 allowable work for a total of 24 hours allowed or 70.6% (24/34) of the paraprofessional's salary and benefits being formula eligible cost.

Example 3

The third example is a Speech Aide who works 18 hours a week with 10 hours spent on allowable K-12 special education, 1 hour spent providing EST/504 services for K-12 student and 7 hours spent in the preschool program.

Total Time Worked On Weekly Schedule	18 Hours
1. Hours worked – Special Education K-12 Allowable	10 Hours
2. Hours worked – EST/504 Allowable	1 Hours
3. Hours worked – Unallowable K-12	7 Hours
Maximum 20% Additional Time (Calculated as the amount of Sped Allowable in 1. above multiplied by .2)	2 Hours
EST/504 Allowed (Actual hours in 2. above up to the maximum calculated on line above)	1 Hours
Total Hours Allowed for K-12 Formula Funding	11 Hours
% of Time Allowed for K-12 Formula Funding	61.1 %

The 20% is calculated as 2 hours but since only 1 hour was spent on EST/504 services, the total allowable time is 11 hours which would result in 61.1% (11/18) of the paraprofessional's salary and benefits being K-12 formula eligible cost.

If you have questions, please feel free to contact me at (802) 828-5119.